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CASA VIEW II LIMITED
PARTNERSHIP

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES JOSEPH JULUKE, Jr.,
Plaintiff,

v. **CIVIL ACTION NO. 3:16-cv-02325**

CASA VIEW II LIMITED PARTNERSHIP,
Defendant.

ANSWER AND DEFENSES OF DEFENDANT CASA VIEW II LIMITED PARTNERSHIP

TO THE HONORABLE SAM A. LINDSAY,
UNITED STATES DISTRICT JUDGE:

COMES NOW the Defendant, Casa View II Limited Partnership ("Casa View") and for its answer to the Complaint filed by Plaintiff, James Joseph Juluke, Jr. ("Juluke"), denies each and every, all and singular, the allegations in the Complaint, except those that are specifically admitted hereinafter, and further avers and states:

JURISDICTION AND PARTIES

1. Defendant admits this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367(a), Tex. Hum. Res. Code Ann. § 121.001, et seq., and 42 U.S.C. § 12181 et seq., and that

these statutes speak for themselves. Otherwise, Defendant denies the remaining allegations contained in Paragraph 1.

2. Defendant admits that venue is proper in this Court and that 28 U.S.C. § 1391(b) speaks for itself. Otherwise, Defendant denies the remaining allegations contained in Paragraph 2.

3. With respect to the allegations in Paragraph 3 of the Complaint, Casa View is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and on that basis denies the allegations in Paragraph 3.

4. With respect to the allegations in Paragraph 4 of the Complaint, Casa View is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies the allegations in Paragraph 4.

5. With respect to the allegations in Paragraph 5 of the Complaint, Casa View is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and on that basis denies the allegations in Paragraph 5.

6. Defendant admits the allegations in the first sentence of Paragraph 6 of the Complaint. Defendant denies the allegations in the second sentence of Paragraph 6 of the Complaint and affirmatively states it does not own or operate a shopping center "known as 'CASA VIEW VILLAGE' generally located at 2203 Gus Thomasson Road, Dallas, Texas 75228."

7. With respect to the allegations in Paragraph 7 of the Complaint, Casa View is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and on that basis denies the allegations in Paragraph 7.

COUNT I (VIOLATION OF TITLE III OF THE ADA)

8. Defendant restates and realleges its responses to Paragraphs 1 through 7 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9.

10. With respect to the allegations in Paragraph 10 of the Complaint, Casa View is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and on that basis denies the allegations in Paragraph 10.

11. Defendant denies the allegations contained in Paragraph 11.

12. With respect to the allegations in Paragraph 12 of the Complaint, Casa View is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and on that basis denies the allegations in Paragraph 12.

13. Defendant denies the allegations contained in Paragraph 13, including all subparts.

14. Defendant denies the allegations contained in Paragraphs 14 and 15 of the Complaint.

15. With respect to the allegations in Paragraph 16 of the Complaint, Casa View

is not acquainted with Juluke and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and on that basis denies the allegations in Paragraph 16.

16. Defendant denies the allegations contained in Paragraphs 17, 18, and 19 of the Complaint.

COUNT II (VIOLATION OF CHAPTER 121 OF
THE TEXAS HUMAN RIGHTS CODE)

17. Defendant restates and realleges its responses to Paragraphs 1 through 16 of the Complaint.

18. Defendant admits that the Tex. Hum. Res. Code Ann. § 121.001, *et seq.*, speaks for itself. Otherwise, Defendant denies the remaining allegations contained in Paragraph 21.

19. Defendant admits that the Chapter 121.003(d)(1) speaks for itself. Otherwise, Defendant denies the remaining allegations contained in Paragraph 22.

20. Defendant admits that the Chapter 121.004(b) speaks for itself. Otherwise, Defendant denies the remaining allegations contained in Paragraph 23.

21. Defendant denies the allegations contained in Paragraph 24.

GENERAL DENIAL

22. Defendant denies each and every allegation and prayer of the Complaint not specifically admitted above.

ATTORNEYS' FEES

23. Defendant has retained Gregory A. Whittmore and agreed to pay him a reasonable fee for his services. Pursuant to 28 U.S.C. § 1927, 42 U.S.C. § 12205, and the Texas Human Rights Code, Defendant is entitled to recover its attorneys' fees and costs.

FIRST DEFENSE

24. Plaintiff lacks standing to bring this action, and therefore, the Complaint should be dismissed.

SECOND DEFENSE

25. Each of Plaintiff's causes of action, claims, or items of damage did not accrue within the time prescribed by law for it before this action was brought.

THIRD DEFENSE

26. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

FOURTH DEFENSE

27. An indispensable party defendant has not been joined in this action because the allegations of the Complaint show that the purported violations include facilities or spaces that are the responsibility of another and it has not been joined in this action.

FIFTH DEFENSE

28. Plaintiff has demanded modifications that would result in significant loss of sale and/or serving space.

SIXTH DEFENSE

29. Plaintiff has demanded modifications to the property that are structurally impracticable, technically infeasible, or are not required.

SEVENTH DEFENSE

30. Plaintiff has demanded modifications to the property that would threaten the health and safety of Plaintiff or others.

EIGHTH DEFENSE

31. Defendant has already implemented the removal of any existing barriers. Therefore, Plaintiff's claim is moot and Plaintiff is not entitled to an injunction or attorney's fees.

NINTH DEFENSE

32. Plaintiff has demanded modifications that would require Defendant to fundamentally alter the way it provides its goods and services.

TENTH DEFENSE

33. To the extent any architectural barriers exist, they are merely technical violations within conventional industry tolerances and the property, when taken as a whole, is compliant with the ADA and its implementing regulations.

ELEVENTH DEFENSE

34. Defendant does not own or operate a shopping center "known as 'CASA VIEW VILLAGE' generally located at 2203 Gus Thomasson Road, Dallas, Texas 75228." To the extent some or all of the claims or issues relate to property that is owned, operated or leased by another party, Defendant is not liable for compliance on property which it does not own, operate, or lease.

TWELFTH DEFENSE

35. To the extent any architectural barriers exist, they have already been remedied and/or removed and the issues are now moot and the property is compliant with the ADA and its implementing regulations.

WHEREFORE, PREMISES CONSIDERED, Defendant, Casa View II Limited

Partnership, respectfully prays that the Plaintiff take nothing by his Complaint and that Defendant go hence without day with its attorneys' fees, costs, and such other and further relief to which it may be entitled.

Respectfully submitted,

By: /s/ Gregory A. Whittmore
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CASA VIEW II LIMITED PARTNERSHIP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served by the Electronic Case Filing system or first class mail, postage prepaid, on the following persons or entities on the 6th day of September 2016:

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/s/ Gregory A. Whittmore
Gregory A. Whittmore